

# **VENDOR OPERATING PROCEDURES MANUAL**

## **SECTION V**

### **VENDOR EMPLOYMENT STATUSES**

#### **5.1. Initial Assignment**

When a trainee is certified as qualified for licensing, he/she is eligible to bid on locations as outlined in Section 5.4. below. Additionally, if a new or existing location(s) is vacant and no licensed vendor requests a transfer or promotion to this location(s) then the Vending Facility Program Administrator in consultation with the Vending Facility Program Training Specialist and State Committee Chairperson may offer said location(s) to the prospective licensee. A person certified for licensure may reject up to two offers of assignment without jeopardizing their status. If a third assignment is rejected, then that person will lose their certification for licensing and all rights thereto. If the person wishes to reenter the Vending Facility Program, he/she must do so as any new applicant. Spouses of licensed vendors will not be required to take assignments outside of the geographic area in which they reside.

#### **5.2. Displacement Status**

A vendor who has been displaced through loss of entitlement to operate a vending facility through no fault of his own may be given priority as to determination of the person to be assigned to a new or vacant facility if it is equivalent to the facility which he/she formerly operated, and will continue to accrue seniority and vacation in displacement status (see Section 5.3. for definition of seniority). Displaced vendors cannot earn or use sick leave and any accumulated sick leave will be frozen until the vendor is assigned a location. When the vendor is reassigned a location, he will earn sick leave in accordance with 6.2. When the Vending Facility Program initiates or receives written notification from the grantor to close the location, the vendor will become displaced if it is through no fault of his own. When verbal notification is received, the Vending Facility Program Administrator will send a letter verifying that the location will close on a specific date. The vendor will then be placed in displaced status the date of the letter. The vendor does not have to be inventoried out of the location to receive displaced status benefits. Should the grantor decide not to close the location after notification and the location remains open, the vendor will be removed from displaced status. "Equivalent Facility" means a facility having similar physical requirements of operation and one which does not exceed \$50 per period or a total amount not to exceed \$650.00 per fiscal year above the gross profit of the vendor's previous location from which he/she has been displaced.

The determination of vendor's average gross profit shall be based upon the vendor's previous 13 reporting periods. The vendor's average gross profit shall be computed by taking the sum of the vendor's gross profit for the 13 periods prior to displacement and dividing by 13. If the vendor in displaced status was a newly licensed vendor for less than 13 periods prior to displacement from the date of initial licensing to operate a vending facility, then the period of time from the date of licensing to the date of displacement shall be used to compute vendor's total and average per period gross profit. Newly licensed vendor's gross profit per period shall be computed by taking the total vendor's gross profit and dividing by the number of 4 week fiscal reporting periods or fractions thereof. In the case of a vendor who has had more than one assignment within the previous 13 reporting periods or after date of initial licensing to the time of displacement, vendor's average gross profit shall be computed by taking the total of all vendor's gross profit regardless of assignment from the covered reporting periods not to exceed 13 reporting periods and then divide by that number of periods.

The following process shall be used to determine the financial equivalence of a location. A facility that has been in existence greater than 13 fiscal reporting periods shall have the previous 13 fiscal reporting periods used to determine the average gross profit of the location. If the location is a new location then the average will be determined for the length of time that the facility has been opened up to a maximum of 13 reporting periods.

All vacant facilities will be advertised and vendors in displaced status wishing to place application on the basis of displaced status may do so and will be considered as displaced vendors in accordance with displaced vendor policy. A displaced vendor may elect to use the displacement option on locations that are equivalent or less if they so choose. During a one year period following displacement, the vendor may decline assignment to any location. After a period of one year has elapsed since displacement, the vendor must accept any unassigned vending facility. The offer of such location(s) shall be made in writing to the displaced vendor and failure to accept such written offers shall cause the displaced vendor's license to be revoked. When more than one displaced vendor is eligible for a location in this situation, the vendor who has been displaced the longest will be given priority for a location.

5.2.1. Insurance for Displaced Vendors. Effective July 1, 1986, those vendors in displaced status shall be eligible to have their health insurance premiums paid partially from the Set-Aside Fund the same as assigned vendors for a period not to exceed one year from the date of displacement.

### 5.3. Transfer or Promotion

When a new facility is established or a vacancy occurs in an existing facility, all vendors will be notified in writing of the availability of the facility, its

operating requirements, and actual or potential earnings. Those vendors meeting the definition of displaced status (see Section 5.2.) with respect to the new or existing location and placing written application for such a location shall be given priority in accordance with Section 5.2. Vendors who wish to make application for a facility shall do so in writing to their Vending Facility Specialist.

#### 5.4. Selection of Vendor for Transfer or Promotion

The criteria to determine the vendor who will be transferred or promoted are:

- A. Seniority - provided the other specified criteria are satisfactorily met,
- B. Ability to meet the physical requirements of operating the facility,
- C. Satisfactory work habits,
- D. Work attitude - including good customer relations, cooperation with property management,
- E. Knowledge and application of sound business practices, and
- F. Not on probation, suspension or in violation of 4.2.18.

"Seniority" means the period of continuous service from the day upon which a vendor was assigned to operate a facility within the program until the day on which it is necessary to compute the amount of seniority he/she has accrued. Other time which will be computed toward "seniority" includes:

- 1. The date of certification for licensing shall be used primarily for determining location assignment among certified licensees who have no accrued "seniority" when no other licensed blind vendor with accrued seniority has made application for transfer or promotion.

All applicants for transfer or promotion shall be ranked on the basis of these criteria by the appropriate members of the Vending Facility Program's staff and the Transfer and Promotion Subcommittee of the State Committee of Blind Vendors. The recommendation of the staff and the subcommittee along with the reasons for such recommendations will be forwarded to the Administrator of the Vending Facility Program or designee who shall make the final decision as to the vendor who will receive the transfer or promotion.

In the event a licensed blind vendor is not recommended by his specialist for transfer or promotion, the licensed blind vendor must be provided training to correct any deficiencies noted in order to satisfy the requirements for operation.

This training may include, but not be limited to, on-the-job training and classroom training.

Once the transfer and promotion subcommittee has awarded a location to a vendor, the Vending Facility Program Administrator will immediately notify that vendor. At that time, the vendor awarded the location cannot refuse to accept the location. If a vendor chooses to refuse the awarded location, their license is automatically terminated in accordance with Section 3.2.J.

In the event that legal action arises over vendor transfer or promotion, the State Licensing Agency will be responsible for all judgments and legal actions taken. The Set-Aside and Special Programs funds are not subject to any liabilities for management decisions of the State Licensing Agency.

5.4.1. Composition of Transfer and Promotion Subcommittee. After the conclusion of the bid application process, the chairperson of the State Committee of Blind Vendors shall assign a Transfer and Promotion Subcommittee to meet with the Vending Facility Program Administrator in considering applicants for a location. The subcommittee must consist of the following:

- A. A licensed blind vendor representative from each region of the state.
- B. At least one member of a minority group.
- C. At least one female.

The subcommittee shall consist of four individuals and the chairperson meeting the above referenced criteria. No person is eligible to serve on the committee who has submitted an application or who is directly related to anyone submitting an application for transfer or promotion. The subcommittee shall then be called to meet by the chairperson with the Vending Facility Program Administrator to consider all applicants and make recommendations for transfer or promotion.

## 5.5. Disciplinary Action

If the vendor has engaged in conduct or actions which hinder or are detrimental to the effective operation of the facility, disciplinary action, not subject to policy #3.2 Termination, will be taken as follows:

1. A verbal warning from the Vending Facility Program Administrator or designee. This warning will be noted in the vendor's personnel file.
2. A written warning to the vendor setting forth the specific policy violations, steps for correction, and consequences of continued violations.

3. Should violations continue, the vendor will be placed in probationary status for a prescribed time and specific terms outlined for removal from probation. Probationary periods will not exceed three months. No licensed blind vendor or certified licensee shall be eligible to apply for a transfer or promotion to an existing vacant location if the licensed blind vendor or certified licensee has been placed on probation or suspension. The ineligibility to make application for transfer or promotion shall extend through the entire time of probation and/or suspension and said persons shall not have the right to make application for transfer and/or promotion until they have been removed from probation or suspension.

4. Continued failure to comply with policies will result in suspension. When a vendor is suspended for any reason, the following criteria will apply:

1. Extra help will be paid from the proceeds of the location, but the licensed blind vendor will receive the net profits.
2. Vendor is not eligible to apply for transfer or promotion.
3. Suspension will not exceed 10 working days unless extenuating circumstances are involved.
4. Under extenuating circumstances when suspension exceeds 10 days, seniority will be frozen for the length of suspension. A new license will be issued reflecting the adjusted seniority date.
5. Leave benefits are not available to vendor while on suspension.

5. Continued failure to comply with policies will result in termination in accordance with policy 3.2.

At any step of the disciplinary process, the vendor must be advised of his rights and remedies as set forth in Section XI of this manual.

#### 5.5.A. Licensed Vendor Without A Location

When a vendor has completed actions that place him into the status of "a vendor without a location", the following stipulations apply:

1. The vendor cannot earn or use sick leave and any accumulated sick leave will be frozen until the vendor is assigned a location. When the vendor is assigned a location, he will earn sick leave in accordance with Section 6.2.
2. The vendor will have a one year period from the date the action(s) was completed that he can decline assignment to any location. After a one year period has elapsed, the vendor must accept any unassigned facility. If the vendor does not accept assignment and operate the facility, his license will be revoked.
3. Vacation, seniority (5.5.4.4), retirement and other matters will be determined in accordance with the Vendor Operating Procedures Manual.
4. Vendor will not receive any priority in the bid process other than his seniority date in accordance with Section 5.3 and 5.4. Vendor is not a displaced vendor.

#### 5.6. Resignation

A voluntary separation on the part of the vendor will be considered as an automatic termination of his license and Program rights. Once processed, it cannot be withdrawn.

If a vendor decides to rejoin the program, a period of evaluation, reorientation and training will be necessary. When completed, the vendor will be relicensed and his name will be placed on the ready for employment list as if he were a new licensee. Any money owed to the Program must be repaid before the individual can rejoin the Program.

If possible, a vendor is expected to give at least two week's notice prior to leaving the program. If no notice is given, an inventory will be completed at the earliest possible date. If proper notice is given, an inventory will be completed on the vendor's last working day. All monies that are due to the vendor will be paid to the vendor.

#### 5.7. Termination

A vendor may be terminated for the reasons stated in Section 3.2., Termination of Licenses. When termination occurs, the vendor's license will be revoked. All monies that are due to the vendor will be paid to the vendor.

#### 5.8. Retirement

Retirement is a voluntary separation on the part of the vendor. Retirement is considered an automatic termination of the retiree's license, program rights and seniority. If a retirement is processed, it

cannot be withdrawn. If a retiree decides not to retire and wants to return to the Program, the retiree must apply for training and go through a period of evaluation, reorientation and training as any other new trainee. If retiree completes training and is certified for relicensing, the retiree's name will be placed on the ready for employment list as if the retiree is a new licensee. Any money owed to the Program after a vendor retires must be repaid before the retiree can rejoin the Program.

Mandatory retirement will be based on the vendor's mental and physical disabilities to operate the facility to which the vendor is assigned or other available facilities within the program. The vendor will be evaluated annually to determine whether or not the vendor must retire. All monies due the vendor at retirement will be paid to the vendor. A vendor going through mandatory retirement will not be eligible to rejoin the Program.

## 5.9. Employment of Relief or Extra Help

5.9.1. State Paid Relief Personnel. State paid relief personnel are no longer provided for vendors. Vendors will still receive vacation and sick leave but will arrange for extra help to work their locations.

5.9.2. Essential Extra Help. For purposes of definition, essential extra help shall be defined as a full or part-time employee of a licensed blind vendor essential for the operation of a vending facility in consideration of good management and business practices. Such essential extra help personnel will be paid in accordance with policies set forth in Section 5.9.4. Non-essential personnel are defined as persons employed by the vendor in lieu of sick or vacation leave and not essential for the normal operation of the vending facility. Any extra help whether to assist the vendor in operating the facility or to substitute for him in his absence other than for vacation or sick leave must be arranged for by the vendor and approved by the specialist.

5.9.2.1. Required Payroll Information. In order to properly process the payroll for essential extra help employees, the Vending Facility Program office must have the following information in order to comply with federal and state laws and allow the processing of the essential extra help employee(s) payroll. (See Appendix A for specific forms.)

- Federal tax withholding form (W-4)
- State tax withholding form (AR-4EC)
- Immigration and Naturalization Service Form I-9
- Employment Application form

#### Copy of Social Security card

No essential extra help person's payroll can be processed until all forms have been completed and submitted to the Vending Facility Program office.

#### 5.9.2.2. Payroll Reporting.

It is the responsibility of the licensed blind vendor employing essential extra help to report to the respective Vending Facility Program Specialist payroll information by the appropriate deadline. Vendors failing to report payroll information by the deadline will have employee's payroll computed in accordance with the previous payroll information submitted. If corrections are needed in the payroll, any such correction will be made in the succeeding payroll period and no special payroll checks will be authorized or issued. It shall be the responsibility of the vendor to explain such payroll information to the employed extra help and not the responsibility of the Vending Facility Program office when late payroll information is received.

#### 5.9.3. Non-essential Extra Help.

Effective January 1, 1988, the Vending Facility Program office will no longer be responsible for processing the payroll of non-essential extra help personnel as defined in Section 5.9.2. For purposes of this policy, those vendors on extended sick leave shall not be considered as having non-essential extra help persons. Persons employed under this category shall be employed under the category of extended sick leave extra help personnel. The vendor's Vending Facility Program Specialist should be made aware of the fact that a specific individual or individuals are contracted by the vendor to work as non-essential help. It shall be the sole responsibility of the licensed blind vendor to pay such individuals contracted under such a status as non-essential extra help. Vendors shall not pay for such individuals through the proceeds of the location but shall pay from their own personal resources. Vendors found and proven to be paying non-essential extra help through the proceeds of the location shall be subject to license revocation. The Vending Facility Program office assumes no liability for taxes or other deductions required by Federal or State Income Tax laws and regulations in the contract of non-essential help. Vendors for personal tax purposes should keep a record of any payment made to such non-essential individuals since it is deductible from their personal income taxes as a business expense. It is recommended but not required that a vendor



maintain a written contract with non-essential extra help contractors. See Appendix A for a sample agreement.

Effective February 22, 1990, non-essential extra help is limited to 12 days per calendar year. Use of non-essential extra help beyond 12 days will be subtracted from available vacation leave. If vacation is not available then the progressive discipline process in Section 5.5. will be followed.

#### 5.9.4. Repealed. Maximum Wages to be Paid Extra Help.

The wages that may be paid to a person employed as extra help by a vendor to be deducted as an operating expense. Under no circumstances shall extra help employees be permitted to receive a specified percentage of the profits of the facility. Extra help used for vacation or sick leave will be paid at least the Federal minimum wage; unless the extra help works for their manager as regular extra help and is paid a higher wage, they will be then paid the higher wage.

#### 5.9.5. Criteria for Employing Extra Help.

Persons who are employed as extra help should meet the following criteria:

- (1) Possess the ability to operate the vending facility in a proper and satisfactory manner.
- (2) Be thoroughly reliable and dependable.
- (3) Be accurate in reporting and accounting for funds.
- (4) Be neat in appearance.
- (5) Be courteous and helpful to customers.
- (6) Provide the vending facility office with a copy of his Social Security card.
- (7) Be approved by the Vending Facility Specialist.

#### 5.9.6. Extra Help Location Illness Policy.

1. Employees must report health problems to the manager before starting work.
2. Restrict employee from working with or around food. Exclude employee from the location if you primarily serve a high-risk population.  
Sore throat with fever

3. If the employee has one of the following symptoms, or becomes ill with one of the following symptoms while working, they must immediately report their condition to the manager, stop working, and see a doctor.

Diarrhea

Vomiting

Jaundice (a yellowing of the skin and eyes)

4. Exclude employees with the following illnesses and notify the health department. Work with the health department or medical practitioner when the employee can return to work.

1. Salmonella typhi

2. Shigella spp. (dysentery)

3. Shiga toxin-producing E. coli

4. Hepatitis A virus

5. Norovirus

#### 5.9.7. ServSafe or Ark. Health Department Training for Extra Help.

Effective 11/7/05, any manager that wants his extra help person to take ServSafe or Ark. Dept. of Health training will pay ½ of the cost and the VFP will pay ½ of the cost one time. Whether or not the extra help person passes the course, the program will not spend any additional funds on the training of the extra help person.